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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID LYNELL ROBINSON,

Defendant and Appellant.

A103621

(Solano County  
Super. Ct. No. 186987)

While represented by counsel, David Lynell Robinson (appellant) pled no contest to a single count of petty theft with a prior, as part of a plea agreement in which a count of second-degree burglary was dismissed with a *Harvey* (*People v. Harvey* (1979) 25 Cal.3d 754) waiver. The court placed appellant on probation for three years on condition that he serve 300 days in the county jail. On May 29, 2002, the court summarily revoked appellant's probation. Following a contested hearing on July 10, 2002, the court found appellant in violation of probation but reinstated probation and ordered appellant to attend domestic violence counseling. On July 17, 2003, appellant admitted that he violated the terms of his probation by failing to complete his domestic violence counseling classes and leaving the state without permission. The court again revoked probation and referred the case to the probation department (department) for a sentencing report. The department recommended that the court sentence appellant to the upper term of three years. On August 7, 2003, the court conducted a hearing, revoked appellant's probation and sentenced him to three years in state prison. The court awarded appellant 386 days of credits and imposed a restitution fine of \$200 and a parole revocation fine in the same amount. The court reserved

jurisdiction on the issue of whether appellant would be ordered to pay restitution to the victim of the petty theft.

Appellant has asked this court to make an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Because appellant did not seek and obtain a certificate of probable cause and because he has specifically limited his appeal to the sentence imposed, we will limit our review to sentencing issues. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1094-1097.) We affirm.

In its August 2003 report to the court, the department noted that appellant admitted that he had “missed a couple classes” in his domestic violence counseling program. Anticipating that he would be terminated from the program and that his probation would be revoked, he chose to violate another term of probation by going with his wife to Bullhead City, Arizona, when she obtained a job in that city. The department contacted the police in Bullhead City and determined that they had had four domestic violence related contacts with appellant between March and July 2003. On July 4, 2003, appellant stabbed his wife numerous times in the face and head, nearly killing her. He fled to California, where he contacted the Solano County Sheriff’s Department and was eventually arrested in connection with attempted murder and aggravated assault charges filed against him in Arizona.

The department opined that appellant represented a risk to the community that outweighed any possible benefit that could be gained through a continuation of probation and also noted that his likely extradition to Arizona rendered the issue of further probation moot. The department referred the court to a report it prepared on March 1, 2001, in which it noted that appellant had committed the theft for personal gain. That report listed two factors in aggravation: (1) appellant had suffered numerous convictions as an adult or sustained petitions as a juvenile and (2) he had served a prior prison term. The department noted no factors in mitigation. Accordingly, the department recommended that the court sentence appellant to state prison for the aggravated term of three years.

At the August 7, 2003, hearing, the court listened to argument and determined that it was unlikely that appellant would successfully complete probation. The court stated that appellant had been a marginal candidate for probation in the first instance and that his

performance on probation had demonstrated that he was, in fact, a poor candidate for probation. Accordingly, the court terminated appellant's probation and sentenced him to the aggravated term of three years. In support of the latter choice, the court cited the factors in aggravation set out in the department's report and noted no factors in mitigation. The court awarded appellant 386 days of credits, imposed restitution and parole revocation fines of \$200 each and reserved jurisdiction on the question of whether appellant would be ordered to pay restitution to the victim of the petty theft.

We see no abuse of discretion or other error on the part of the trial court. First, as noted by the department and the court, appellant has suffered numerous felony convictions and has served several prior prison terms. Each was a proper factor for the court to consider in aggravation. (Cal Rules of Court, rules 4.421(b)(2) and 4.421(b)(3).) Further, the record discloses no factors in mitigation. Accordingly, we see no abuse of discretion in the court's choice to impose the aggravated term of three years. (Cal. Rules of Court, rule 4.420(b).) In addition, the court awarded the correct number of days of custody and conduct credits, as calculated by the department. Finally, the court imposed the minimum restitution fine permitted under Penal Code section 1202.4, subdivision (b)(1), and the court properly imposed a parole revocation fine equal to the restitution fine. (Pen. Code, § 1202.45.)

In sum, we find no arguable issues for review pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436. The judgment is affirmed.

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McGuiness, P.J.

We concur:

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Parrilli, J.

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Pollak, J.